



## Idaho Department of Environmental Quality Draft §401 Water Quality Certification

February 3, 2017

**404 Permit Application Number:** NWW-2015-00132; Neil Water Intake

**Applicant/Authorized Agent:** John Neil applicant/authorized agent Tom Bangle  
Sandpoint Pump & Power

**Project Location:** Latitude 48 13' 43.74"; Longitude 116 17' 27.60" at 13 E. Bay Wood  
Lane Hope, Idaho

**Receiving Water Body:** Pend Oreille Lake

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on January 10, 2017, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

### Project Description

The applicant proposes to place a water intake line for domestic and irrigation use into Pend Oreille Lake. The intake line will extend 200 feet from the ordinary high water mark to a water depth of 35 feet. The first 30 to 40 feet of the 4.5 inch diameter pipe will be trenched into the dry lake bed to a depth of 24 inches. The remaining pipe will be laid on the lakebed. The intake will be screened to prevent fish entrapment. The project is estimated to take three days to complete and will occur during low pool.

### Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

The primary pollutants of concern for this project are sediment and mercury. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment and mercury.

### ***Receiving Water Body Level of Protection***

This project is located on Pend Oreille Lake within the Pend Oreille Lake Subbasin assessment unit (AU) ID17010214PN018L\_0L (Pend Oreille Lake). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, domestic water supply, primary contact recreation. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2012 Integrated Report, this AU is not fully supporting its aquatic life, salmonid spawning and secondary contact recreational uses. Causes of impairment include mercury, other flow regime alterations and phosphorus. As such, DEQ will provide Tier 1 protection (IDAPA 58.01.02.051.01) only for both the aquatic life and recreational uses.

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

As noted above, a Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained

and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses. In addition, the project will be consistent with the *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. The project will be conducted in the dry during low pool. There will be no dredging in the water and the trench for pipe burial will be minimally sized so as to disturb as little lakebed as possible. Conditions in the certification regarding revegetation will ensure that erosion will not be an issue.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## **Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### ***General Conditions***

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.

3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.

### ***Erosion and Sediment Control***

8. Sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
9. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or modified if they are not effective.
10. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
- 11. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.**
- 12. Silt fence shall not be installed on the lakebed.**

### ***In-water Work***

13. In-water dredging is not authorized by this certification.
14. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
- 15. The pipeline must be adequately anchored to ensure that the pipe does not float up off the lakebed and create a hazard to recreational uses.**

### **Management of Hazardous or Deleterious Materials**

16. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.

17. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
18. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use.
19. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
20. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
21. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
22. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
  - a. Make every reasonable effort to abate and stop a continuing spill.
  - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
  - c. Immediately notify DEQ of the spill by calling the Idaho State Communications Center at 1-800-632-8000.
  - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.
23. Any release that causes a sheen (of any size) in waters of the state must be reported *immediately* to the National Response Center at 1-800-424-8802 and DEQ by calling the Idaho State Communications Center at 1-800-632-8000.

## Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to June Bergquist Coeur d’Alene Regional Office at (208) 666-4605 or email at [june.bergquist@deq.idaho.gov](mailto:june.bergquist@deq.idaho.gov) .

DRAFT

Daniel Redline

Regional Administrator